



## **MINUTES OF THE MEETING OF THE MEDICAL SERVICES BOARD**

303 East 17th Avenue, 7th Floor Conference Room

August 14, 2015

### **1. Call to Order**

Mike Stahl called the meeting to order at 9:05 a.m.

### **2. Roll Call**

The Board Coordinator called the roll. There were sufficient members for a quorum, with eight members participating and three members excused. Christy Blakely participated by telephone conference call.

#### **A. Members Present**

Christy Blakely, Patricia Givens, Brenda LaCombe, Paul Melinkovich, Amanda Moorer, David Potts, Mike Stahl, and Mary Trujillo-Young.

#### **B. Members Excused**

Bregitta Hughes, Jessica Kuhns, and Donna Roberts

#### **C. Staff Present**

Tom Massey, Deputy Executive Director/Director, Policy, Communication and Administration Office; Jennifer Weaver, First Assistant Attorney General; Judi Carey, MSB Coordinator; and Dan Hutchinson, Staff Support

### **3. Announcements**

Mr. Stahl announced that the next Medical Services Board Meeting will be held in the 7th floor conference room at 303 East 17th Avenue in Denver on Friday, September 11th, at 9:00 a.m.

It is the policy of this Board and the Department to remind everyone in attendance that this facility is private property. The capacity of the meeting room is 80. Please do not block the doors or stand around the edges of the room. Please turn cell



phones off while in the meeting room, as they interfere with the recording equipment.

## **4. Approval of Minutes**

Dr. Givens moved for the approval of the July minutes. The motion was seconded by Ms. Moorer. There were no comments and the minutes were approved as submitted, 8:0.

Mr. Stahl introduced Commissioner David Potts.

## **5. Rules**

### **A. FINAL PERMANENT ADOPTION BY CONSENT AGENDA**

#### **1) Document 01 MSB 15-04-17-A**

Revision to the Medical Assistance Home and Community Based Services Home Modification Rule for the Persons with Brain Injury Waiver, Community Mental Health Supports Waiver, Spinal Cord Injury Waiver, and Elderly, Blind, and Disabled Waiver, Section 8.493

Dr. Melinkovich moved for the final permanent adoption by consent of Document 01.

Mr. Stahl stated that there was someone signed up for public testimony.

Dr. Melinkovich moved to pull Document 01 from consent for further consideration for final permanent adoption. The motion was seconded by Ms. Moorer.

#### Board Discussion

There was no board discussion on Document 01.

#### Public Testimony

Janice Hinds, Colorado Mental Health Institute, Fort Logan

Public testimony included: support for the rule; that it will allow more people with mental illness to live in community; and that with more funding comes more attention for people who need home modification services.

The Board voted for the final permanent adoption of Document 01, 8:0.



## **B. FINAL PERMANENT ADOPTION AGENDA**

### **1) Document 02 MSB 15-05-27-B**

Revision to the Medical Assistance Eligibility Rule Concerning the Use of Private Disability Income, Section 8.100.4.C.

Dr. Givens moved for the final permanent adoption of Document 02. The motion was seconded by Dr. Young. Marivel Guadarrama and Geoffrey Oliver, Health Information Eligibility Policy Section, presented the proposed rule and explained that it revises the MAGI methodology determination process to comply with federal law and it incorporates changes based on the AG's review.

#### Board Discussion

There was no board discussion on Document 02.

#### Public Testimony

There was no public testimony on Document 02.

The Board voted for the final permanent adoption of Document 02, 8:0.

### **2) Document 03 MSB 15-05-27-D**

Revisions to the Medicaid Eligibility Rules pursuant to changes set forth in the Balanced Budget Act of 1997 to offer up to 12- months of continuous eligibility, affecting Section 8.100.3

Ms. Moorer moved for the final permanent adoption of Document 02. The motion was seconded by Dr. Givens. Marivel Guadarrama and Ana Bordallo, Health Information Eligibility Policy Section, presented the proposed rule and explained that the changes from AG's review of the rule and stakeholders' comments were incorporated. An "R" page was submitted for consideration by the Board.

Dr. Melinkovich moved for the inclusion of the "R" page. The motion was seconded by Mr. Potts and approved, 8:0

#### Board Discussion

Board discussion and questions included that when a child in foster care transitions from place to place, they will maintain medical coverage.

#### Public Testimony

There was no public testimony on Document 03.

The Board voted for the final permanent adoption of Document 03, 8:0.



## C. INITIAL APPROVAL AGENDA

### 1) Document 04 MSB 15-07-08-A

Revision to the Medical Assistance Health Information Office General Eligibility Rules at Sections 8.100.1 and 8.100.3

Ms. LaCombe moved for the initial approval of Document 04. The motion was seconded by Ms. Moorer. Marivel Guadarrama and Geoffrey Oliver, Health Information Eligibility Policy Section, presented the proposed rule and explained that it implements the revisions that were identified in the Department's 2014 regulatory efficiency review process.

#### Board Discussion

Board discussion and questions included: clarifications on formatting; that the verification of lawful presence is a federal requirement and can't be changed; that this requirement affects only a handful of clients; that the simultaneous enrollment provision complies with the Affordable Care Act, which requires coverage as soon as possible; that staff is working to identify clients affected by this; and the Department will continue to discuss with Connect For Health Colorado in weekly meetings.

#### Public Testimony

Bethany Prey, Colorado Center on Law and Policy

Public testimony included: the question of whether, when an individual is simultaneously enrolled and receives a tax credit, they will be allowed to keep the tax credit when filing taxes; that these individuals will not be reimbursed for any premiums paid; that this is a topic of great interest; that the department is working with stakeholders and advocates to work out the policy and process implications of this law; that individuals will not be penalized for this; and that department staff offered to come back to a subsequent meeting with additional information on this topic.

The Board voted for the initial approval of Document 04, 8:0.

### 2) Document 05 MSB 15-07-08-B

Revision to the MAGI Medical Assistance Health Information Office Eligibility Rules at Section 8.100.4

Dr. Young moved for the initial approval of Document 05. The motion was seconded by Dr. Melinkovich. Marivel Guadarrama and Ana Bordallo, Health Information Eligibility Policy Section, presented the proposed rule and explained that it implements the revisions identified in the Department's 2014 regulatory efficiency review process.



### Board Discussion

Board discussion and questions included: that new language clarifies that when an individual is over income for Medicaid and under income for Advance Premium Tax Credit (APTC), they will be covered by Medicaid; that the revisions will be helpful for individuals who are seasonal workers; an explanation of how eligibility determination is made for Medicaid vs. for the Advance Premium Tax Credit (APTC); that language was added to clarify what is counted as income; that the provision for transitional med is confusing and cumbersome; that it would be preferable to make this language more understandable and improve the process for moving off the program; that this is a long-standing provision that assisted individuals with continuous eligibility as their income increased; that department staff are agreeable to considering language that is proposed; that the current language is in alignment with federal law; that transitional med is an opportunity but can also be a hindrance; and that other avenues could be explored for this information, such as FAQs, the web-site; etc.

### Public Testimony

Bethany Prey, Colorado Center on Law and Policy

Public testimony included: that the details regarding the American Indian/Alaskan Native income exceptions should be included in the rule text; that at 8.100.4.D, reference to "income is calculated by including the MAGI-based income of every individual in the household" is contradictory to the new language that states "when dependents income is not sufficient to file a tax return"; and that at 8.100.4.E, "tax filer" was not included.

The Board voted for the initial approval of Document 05, 8:0

### 3) Document 06 MSB 15-02-09-A

Revision to the Medical Assistance Home and Community Based Services for Persons with Brain Injury Rule Concerning Independent Living Skills Training (ILST), Section 8.516.10

Dr. Givens moved for the initial approval of Document 06. The motion was seconded by Dr. Melinkovich. Colin Laughlin, Long-Term Services and Supports HCBS Benefits Unit, presented the proposed rule and explained that it improves service definitions for the program, provides additional clarifications, and eases restrictions on providers to increase coverage in rural areas.

### Board Discussion

Mr. Stahl stated that he works for an agency that operates a supportive living program for persons with brain injury as well as a class a facility.



Board questions and discussion included: that the term speech therapist is outdated and they are now referred to as speech language pathologists; that the term medical professional is outdated and they are now referred to as health care professionals; that the oversight piece has been an issue for debate with the Department of Public Health and Environment (DPHE); that there is concern that an ILST provider may veer off the plan formulated by the health professional; that by changing the rule, we would be taking away DPHE oversight; that there is an assumption that the reference to medical doctor also refers to a doctor of osteopathy; that perhaps "licensed physician" is a better way to state it; a clarification that individuals needs are different based on their injury; and that a more general reference could be "licensed behavioral health specialist".

### Public Testimony

Rocky Mountain Health Care Services – Written

Accent on Independence (AOI) – Written

Cheryl Catsoulis, Brain Injury Alliance of Colorado

David Bolin, Accent on Independence

Betsy Murray, Home Care Association of Colorado

Public testimony included: that this has been a long process with a lot of stakeholder input; that it will increase the number of providers across the state; that the work group tried to come to a consensus that would balance oversight and service expansion; that this provides better clarification and better oversight; that individuals with years of experience, but without credentials, could provide services but it would be hard to measure; that this program helps people with brain injury to be more independent and have fewer hospitalizations; that there is support for the rule, but with points of disagreement; that ILST doesn't meet the statutory requirements of licensing; that oversight by DPHE is needed but it doesn't require licensure; that professional oversight of any independent living situation doesn't have to be a doctor or nurse; that "other person" should be added to the medical professional list; that there has to be a way to define the qualifications of a person with the credentials; that there are consequences to how living skills are taught and how they impact medical health; that the rule could define a number of years of experience to qualify; that the change proposed by stakeholders would improve consumer opportunity to choose; that there could possibly be a risk to this; an explanation of the difference between licensure and certification; that there are not currently providers who are certified to provide the service who are not licensed; that the method for paying claims to a certified provider is complex; that in Medicaid, there are two layers, licensure then Medicaid certification; that the license allows for private pay entities and Medicare to provide services as home health care



agencies; that the certification says you are a Medicaid home care agency; that by taking away the licensure requirement, there would be no requirements for a private pay ILST; that, as the rule currently stands with the class A requirement, the program is over medicalized; that the requirements in this rule are a DPHE HCPF compromise; that with certification comes ongoing surveys; that the rule as proposed expands services and has appropriate oversight; and that this has been a heavily negotiated issue and there is concern about moving too far away from those negotiated terms.

The Board voted for the initial approval of Document 06, 8:0.

4) Document 07 MSB 14-10-15-A

Revision to the Medical Assistance Health Programs Benefits Management Rule Concerning Substance Use Services, Section 8.746

Dr. Melinkovich moved for the initial approval of Document 07. The motion was seconded by Ms. Moorer. Alex Weichselbaum and Matt Colussi, Health Programs Office, and Jami Gazerro, Health Programs Office Operations Section, presented the proposed rule and explained that it removes the current rule text from the Code of Colorado Regulations (CCR) and inserts the amount, scope, and duration of the benefit in the CCR as an appendix.

Board Discussion

Board discussion and questions included: that about 2 to 3 % of Medicaid clients are exempt from BHOs and they include members enrolled in the Program for All Inclusive Care for the Elderly (PACE), individuals incarcerated by the state, and child members placed in regional care facilities by the county; and that all providers must be certified at either a CAC II or CAC III level.

Public Testimony

There was no public testimony on Document 07.

The Board voted for the initial approval of Document 07, 8:0.

**D. Consent Agenda Motion**

Dr. Melinkovich moved to include Document 07 on the consent agenda. The motion was seconded by Ms. Moorer and approved, 8:0.

**E. Closing Motion**

Ms. Moorer moved to close the rule portion of the agenda. The motion was seconded by Mr. Potts and approved, 8:0.



## 6. Open Comments

No one signed up for public comment in the open forum.

## 7. Department Updates

- Child Health Plan *Plus* Quarterly Report - Written
- Personal Care Services Update –Elizabeth Freudenthal and Jami Gazerro, Health Programs Office Benefits Operations Division
- State Innovation Model (SIM) Grant Update, Lynnette Hampton, SIM Operations Manager
- Department Update/Questions – Tom Massey, Deputy Executive Director/Policy, Communications and Operations Office Director

## 8. The meeting was adjourned at 11:58 a.m.

The next scheduled meeting of the Medical Services Board is at 9:00 a.m. on Friday, September 11, 2015 in the 7th floor conference room at 303 East 17th Avenue, Denver, CO.

Reasonable accommodations will be provided upon request for persons with disabilities. Please notify the Committee Coordinator at 303-866-4416 or [judith.carey@state.co.us](mailto:judith.carey@state.co.us) or the 504/ADA Coordinator [hcpf504ada@state.co.us](mailto:hcpf504ada@state.co.us) at least one week prior to the meeting.

